

REPRESENTATIVE FOR PETITIONERS: Deborah Shubert, Pro Se

REPRESENTATIVE FOR RESPONDENT: W. L. McLaughlin, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MARK & DEBORAH SHUBERT,)	Petition No.: 20-015-05-2-8-00002
)	
Petitioners,)	
)	Elkhart County
v.)	
)	Elkhart Township
ELKHART COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	Parcel No.: 20-11-06-276-002.015
APPEALS,)	
)	
Respondent.)	Assessment Year: 2005
)	

Appeal from the Final Determination of the
Elkhart County Property Tax Assessment Board of Appeals

December 18, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings and conclusions of law.

Issue: Does the Petitioner's real property qualify for the educational use exemption under Ind. Code § 6-1.1-10-16?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. Deborah and Mark Shubert (Petitioners) filed an Application for Property Tax Exemption (Form 136) for the 2005 assessment on May 12, 2005. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the exemption and finding the property 100% taxable on June 17, 2005.
2. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioners filed a Petition for Review of Exemption (Form 132) seeking an administrative review of the PTABOA determination on July 5, 2005.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, Patti Kindler, the designated Administrative Law Judge (ALJ) held the hearing in Goshen on September 26, 2006. She did not conduct an on-site inspection of the property.
4. The following persons were sworn as witness at the hearing:
 - Mark Shubert, owner,
 - Deborah Shubert, owner,
 - W. L. McLaughlin, Attorney at Law,
 - Veronica Williams, Deputy County Assessor.
5. The Petitioners presented the following exhibits:
 - Petitioner Exhibit 1 – *Trinity School of Natural Health, Inc., v. Kosciusko Co. Property Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234 (Ind. Tax Ct. 2003),
 - Petitioner Exhibit 2 – Class curriculum,
 - Petitioner Exhibit 3 – Syllabus and sources for jazz pedagogy,

Petitioner Exhibit 4 – Qualifications of the director of the school,
Petitioner Exhibit 5 – Notice of Witnesses and Exhibits to be submitted,
Petitioner Exhibit 6 – Petition for Review of Exemption,
Petitioner Exhibit 7 – Notice of Action on Exemption, Form 120,
Petitioner Exhibit 8 – The Application for Property Tax Exemption.

6. The following additional items are part of the record of proceedings:
 - Board Exhibit A – The Form 132 Petition with attachments,
 - Board Exhibit B – Notice of Hearing on Petition,
 - Board Exhibit C – Hearing sign-in sheet,
 - Board Exhibit D – Order Regarding Exemption Hearing Conduct.

7. The real property in question is land and a building housing the Deborah Werbrouck School of Dance (DWSD) located at 2514 Wilden Avenue in Goshen.

8. The Petitioners claim the property qualifies for exemption because it is predominately owned, used, and occupied for educational purposes.

9. The school's curriculum and class syllabus demonstrate that the school offers a broad range of instruction relating to many aspects of dance. *Petitioner Exhibits 2, 3.* The director of the school has 38 years of teaching experience at all levels including private studios, colleges, high schools, and national dance organizations. *Petitioner Exhibit 4; Shubert testimony.* The school has been in operation for 38 years. The sole use of the property is operating the dance school. *Shubert testimony.*

10. There is no dispute that the educational use of the property is an exempt purpose. The point of contention is that the property is not owned or operated by a not-for-profit corporation. If the property had been owned and occupied by a not-for-profit corporation, the PTABOA would have allowed the exemption. *McLaughlin argument.*

Jurisdiction

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible personal property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

Analysis

12. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case supporting the claim for exemption. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
13. In making its case, the taxpayer must explain how each piece of evidence is relevant. *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
14. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. Property that "is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes" can be exempt from property taxation. Ind. Code § 6-1.1-10-16.
16. Undisputed testimony established the educational use of the subject property. The Respondent admitted the educational use of the property. The only disagreement involves the ownership and occupancy.

17. The Respondent maintains that even though the Petitioners use the property for educational purposes, the property does not qualify for exemption because it is not owned and operated by a not-for-profit corporation. The Respondent argues that to qualify for exemption, the owner must be an exempt organization and the occupant must be an exempt organization. *McLaughlin argument*.
18. The Respondent is mistaken. The exemption statute requires that property is owned for an exempt purpose, used for an exempt purpose, and occupied for an exempt purpose. *Sangrlea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954 (Ind. Tax Ct. 1997). Nothing in Ind. Code § 6-1.1-10-16 limits exemption to not-for-profit organizations. Indeed, the statute does not differentiate between not-for-profit organizations and for-profit organizations. *College Corner, L.P. v. Dept' of Local Gov't Fin.*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006).
19. The undisputed evidence establishes that DWSD is owned, used, and occupied for educational purposes. The fact that DWSD is a for-profit corporation is irrelevant.

Conclusion

20. The Petitioners are entitled to 100% exemption under Ind. Code § 6-1.1-10-16(a).

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE
- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.